IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 18 of 2001

in

MISC.CIVIL APPLICATIONNo 2245 of 2000

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SONIA JOSEPH GONSALVES

Versus

JOSEPH AVROZ GONSALVES

Appearance:

MR NAGIN N GANDHI for Appellant

CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE Y.B.BHATT

Date of decision: 23/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

1. By this Letters Patent Appeal under Clause 15 of the Letters Patent, the appellant-original petitioner has assailed the order passed by learned Single Judge in Misc. Civil Application No.2245/2000, reviewing the earlier order dated 10.11.2000, which was recorded in a common order disposing of three Revision Application Nos.505/99, 1707/99 and 1718/99, inter alia contending that the impugned order is totally perfunctory, without application of mind and exparte.

2. Before we examine the merits of the appeal, the main issue which would require consideration and adjudication is as to whether the appeal under Clause 15 is maintainable or not? On this point we have heard learned advocate for the appellant threadbare, and he has contended that the rejection of the review application though is recorded in three review applications, which is a common order, it is in exercise of the original jurisdiction of the learned Judge of this Court. It was, therefore contended that Clause 15 will be attracted and Letters Patent Appeal is competent.

3. It is an admitted fact that the three Civil Revision Applications came to be disposed of in absence of the learned advocate for the appellant. At this stage it would be expedient to refer to the provisions of Clause 15 of the Letters Patent which reads as follows:

"15. Appeal from the Courts of original jurisdiction to the High Court in its appellate jurisdiction. - And we do further ordain that an appeal shall lie to the said High Court of Judicature at [Madras], [Bombay], Fort William in Bengal from the judgement (not being a judgement passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court and not being an order made in the exercise of a revisional jurisdiction, and not being a sentence or order passed or made in exercise of the power of superintendence under the provisions of section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to section 108 of the

> Government of India Act, and that notwithstanding anything hereinbefore provided, an appeal shall lie to the said High Court from a judgement of one Judge of the said High Court or one Judge of any Division Court, pursuant to section 108 of the Government of India Act, [on or after the first day of February 1929] in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court where the Judge who passed the judgement declares that the case is a fit one for appeal; but that the right of appeal from other judgement of Judges of the said High Court or of such Division Court shall be to Us, Our heirs or successors in Our or Their Privy Council, as hereinafter provided."

4. It could very well be visualised from the plain perusal of the aforesaid provision that the Clause 15 of the Letters Patent providing for intra-court appeal will not be attracted if the impugned order is in exercise of revisional jurisdiction. An order of a Single Judge exercising revisional jurisdiction obviously is governed by the provisions of CPC and not by those of the Letters Patent. The appellant before us presented applications for review under Order 47, Rule 1 of CPC and the impugned order rejecting the review applications in all the three matters was in exercise of the revisional powers, and it could not be said to be in exercise of the original powers or jurisdiction of the learned Single Judge. Orders made by a Single Judge in exercise of revisional jurisdiction are not appealable under Clause 15. This proposition is extensively explored, exhaustively expounded and very well settled requiring no further detailed or meticulous articulation of principles.

5. Letters Patent Appeal does not lie against an order refusing to review the judgement passed in revisional jurisdiction also for the simple reason that if an appeal does not lie against the judgement, Letters Patent Appeal will not lie against an order arising out of such review application. Exercise of power and passing of any order in revisional jurisdiction or power otherwise also is not appealable invoking the aids of provisions of Clause 15 of the Letters Patent. In this connection a Full Bench Decision of this Court in the case of Khevinaben R. Patel Vs. J.J. Desai, reported in 35(1) GLR 344 fully reinforces this proposition. The observations made in para 20 are very pertinent. We, therefore, with profit reproduce the said para as under:

"20. Now, we will take up the second aspect as to whether the jurisdiction exercised by the learned single Judge and in which he made the order, subject-matter of this letters Patent Appeal, is one, which permits an appeal to a Division Bench under Clause 15 of the Letters Patent. Under Clause 15 of the Letters Patent, the following categories of decisions are being excluded from being amenable to an appeal to a Division Bench of the High Court:

(i) A judgement passed in exercise of appellate jurisdiction in respect of decree or order made in exercise of appellate jurisdiction by a Court subject to the superintendence of the High Court;

(ii) An order made in exercise of revisional jurisdiction; and

(iii) A sentence or order passed or made in exercise of the power of superintendence under the provisions of Sec.107 of the Government of India Act or in exercise of Criminal jurisdiction of one Judge of the High Court or one Judge of the Division Court pursuant to Sec.108 of the Government of India Act".

An exception has been set down as follows:

" xx ... notwithstanding anything hereinabove provided an appeal shall lie to the said High Court from a judgement of one Judge of the said High Court, or one Judge of any Division Court, pursuant to Sec.108 of the Government of India Act made on or after the first day of February 1929, in exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge who passed the judgement declares that the case is a fit one for appeal; ..." (emphasis supplied)

Under the Letters Patent, various jurisdictions are conferred on the High Court. Broadly

classified, they are Ordinary Original Civil Jurisdiction, Extra-ordinary original Civil Jurisdiction, Appellate Jurisdiction from subordinate Courts, Jurisdiction as to Infants and Lunatics, Insolvency Jurisdiction, Criminal Jurisdiction, Testamentary Jurisdiction, and Matrimonial Jurisdiction. So far as intra-Court appeals are concerned, we cannot lose sight of the exclusions spoken to in Clause 15 of the Letters Patent. An order made in exercise of Revisional Jurisdiction is specifically excluded under Clause 15 of the Letters Patent. There is no escape from it. Revival, putting an end to, on technical or other preliminary grounds, deciding finally, shutting out even at the inception, of proceedings, are all in and relatable only to the specified jurisdictions and powers conferred on the Court and invoked. There could not be a mixing up of jurisdictions or powers conferred on the Court and invoked for initiation of proceedings. If and when a particular jurisdiction or power is invoked for initiation of proceedings, it is not possible to dissociate the related steps or proceedings from the main proceedings initiated under that jurisdiction and power. The nature of the main proceedings will decide the nature of all the proceedings relatable to it. It will not be proper to import a concept of an independent proceeding; nor is it possible to give the proceeding relatable to the main proceeding the character of an original proceeding. The concept of an original proceeding in that context, in our view, would be a misnomer. A jurisdiction or a power invoked must govern all the proceedings relatable to the main proceeding. If the proceeding is not relatable to the main proceeding, any order passed in such proceeding could not have any effect on the main proceeding. But the intendment of the related proceeding is only to have effect on the main proceeding and hence, the nexus could not be snapped or lost by calling the related proceeding `an independent proceeding', or `an original proceeding'. One kind of jurisdiction or power invoked will continue to have that character alone despite innumerable proceedings cropping up or branching out of the main proceeding thereunder. The nature of the jurisdiction and power invoked, for the main proceeding will decide the nature of the jurisdiction and power invoked in respect of all

the proceedings relatable to it."

It is in this context we find no substance in the contention raised by the learned Advocate Mr. Gandhi for the appellant. Incidentally we may also indicate that even under the provisions of order 47 which provides mechanism for review procedure makes it very clear that an application under order 47, Rule 1 of CPC in the event of being rejected will not be appealable as mandated under Order 47, Rule 7.

6. After having taken into consideration the relevant proposition of law, the underlying design and desideratum of the provisions of Clause 15 of the Letters Patent and order 47 Rule 1 and 4 of the CPC, we are of the clear opinion that the impugned order whereby application for review under Order 47, Rule 1 of CPC came to be rejected, is not appealable invoking the aids of the provisions of Clause 15 of the Letters Patent Therefore this Letters patent Appeal deserves only and only one fate and that too of dismissal. Therefore the appeal is dismissed at the threshold with no order as to costs.

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